

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CACR04-1020

September 27, 2006

ROBERT C. TAYLOR
APPELLANT

AN APPEAL FROM DREW
COUNTY CIRCUIT COURT
[CR92-043-3]

V.

HON. F. RUSSELL ROGERS, JUDGE

STATE OF ARKANSAS
APPELLEE

REVERSED AND DISMISSED

This is the second appeal in this revocation case. In the first appeal, we remanded because we were unable to determine from the record on appeal or from the parties' briefs whether the trial court had jurisdiction to revoke Robert Taylor's probation or whether the trial court failed to hold his probation hearing within the requisite sixty-day limit.¹ The State now concedes that the trial court lacked jurisdiction to revoke appellant's probation. Accordingly, we reverse and dismiss the order revoking appellant's probation.

The facts relating to the jurisdictional issue are as follows. On November 9, 1992, appellant pleaded guilty to burglary and theft of property. He was fined and placed on five years' probation. Thus, his probation would have expired on November 9, 1997. However, his probation was extended twice, on September 2, 1997, and November 4, 1998; pursuant to these extensions, appellant's probationary period was due to expire on November 4, 2003.

¹*Taylor v. State*, 2006 WL 401659 (No. CACR 04-1020) (Feb. 22, 2006).

The petitions to revoke in the instant case were filed on November 16, 2001, and July 3, 2003. Each was based on conduct that was alleged to have occurred after appellant's original probationary period expired. After several continuances, the revocation hearing was held on January 26, 2004. On March 26, 2004, the trial court entered an order indicating that the revocation hearing had been timely conducted and that the court had jurisdiction, pursuant to Ark. Code Ann. § 5-4-309(e) (Repl. 2006), to revoke appellant's probation, notwithstanding the fact that his extended probation had expired. The court revoked appellant's probation and sentenced him to serve seven years in the Arkansas Department of Correction.

We reverse and dismiss the March 26, 2004 order revoking appellant's probation. The State concedes that whether the trial court had jurisdiction to revoke appellant's probation is an issue that may be raised for the first time on appeal. *See Gates v. State*, 353 Ark. 333, 107 S.W.3d 868 (2003). The State further concedes that, pursuant to *McGhee v. State*, 334 Ark. 543, 975 S.W.2d 834 (1998), and *Harmon v. State*, 317 Ark. 47, 876 S.W.2d 240 (1994), the trial court lacked jurisdiction to revoke appellant's probation.

It is true that Ark. Code Ann. § 5-4-309(e) authorizes a trial court, under certain conditions, to revoke a defendant's probationary sentence before the expiration of the probationary period. However, in 1992, when appellant's original offenses were committed, the trial court lost jurisdiction to modify the original sentence in any respect once a defendant's sentence had been executed. *See McGhee, supra; Harmon, supra*. Further, at that time, once a defendant was fined and placed on either probation or a suspended sentence, a judgment of conviction was entered, which meant that the defendant's sentence had been executed, and thus, could not thereafter be modified. *See McGhee, supra; Harmon, supra.*²

²Although Act 1569 of 1999 legislatively overruled *McGhee*, the Act is not implicated here because it was not in effect at the time appellant committed the original offenses for

Here, appellant's 1992 guilty plea, which was coupled with probation and a fine, constituted a conviction that was set into execution once the judgment of conviction was entered. Under the law in effect at that time, the trial court did not have the option to thereafter extend his probation. As such, the trial court had no jurisdiction to extend appellant's probation on September 2, 1997, or November 4, 1998, and had no jurisdiction to revoke his probation on March 26, 2004. *See, e.g., Wells v. State*, 337 Ark. 586, 991 S.W.2d 114 (1999) (reversing and dismissing an order revoking probation where the trial court lacked jurisdiction to enter the order). Because we reverse and dismiss the trial court's order, we do not consider appellant's alternate arguments raised in the first appeal: whether the trial court failed to hold the revocation hearing within sixty days or whether his double-jeopardy rights were violated.

Reversed and dismissed.

VAUGHT and ROAF, JJ., agree.

which he was placed on probation. *See Bagwell v. State*, 346 Ark. 18, 53 S.W.3d 520 (2001).